# IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

## CRIMINAL REVISION APPLICATION No. 791 of 2004

**For Approval and Signature:**

**HONOURABLE MR.JUSTICE A.M.KAPADIA**

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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**KAMLESHBHAI BHUPATBHAI JANI - Applicant(s)**

**Versus**

**THAKKER SURESHBHAI JAGJIVAN DAS, HEIR & LR OF DECEASED & 1 - Respondent(s)**

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**Appearance :**
MR KIRTIDEV R DAVE for Applicant(s) : 1,
MR CHETAN P PANDYA FOR MR BHARAT JANI for Respondent(s) : 1,
MR HM PRACHCHHAK APP for Respondent(s) : 2,
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**CORAM : HONOURABLE MR.JUSTICE A.M.KAPADIA**

**Date : 25/10/2005**

## ORAL JUDGMENT

1. By filing instant petition under Section 397 read with Section 401 of the Code of Criminal

Procedure ('the Code' for short), the applicant ('accused' for short) seeks to challenge the judgment and order dated 4.11.2004 rendered in Criminal Appeal No.3 of 2004 by the learned Additional Sessions Judge and 3rd Fast Track Court, Patan by which the appeal filed by the accused came to be dismissed and thereby the judgment and order dated 30.12.2003 rendered in Criminal Case No.25 of 2001 by the learned JMFC, Harij, District Patan convicting and sentencing the accused for commission of the offence under Section 138 of the Negotiable Instruments Act ('the Act' for short) came to be affirmed.

2. It appears from the record of the case that father of opponent No.1 ('the complainant' for short) had filed one complaint in the Court of learned JMFC, Harij under Section 138 of the Act against the accused, inter alia, alleging that the cheque dated 4.12.2000 for Rs.1,50,000/- drawn on Nav Nirman Bank, Ahmedabad issued by the

accused in his favour was dishonoured on presentation on account of insufficiency of funds and, therefore, the complainant had issued notice dated 23.12.2000. The said notice was neither replied nor complied and therefore a complaint being Criminal Case No.25 of 2001 has been instituted by the complainant against the accused for the alleged offence under Section 138 of the Act.

3. The learned JMFC, Harij recorded the plea of the accused. The accused denied the charge and therefore he was put on trial. At the end of the trial, on appreciation, evaluation and critical analysis of the evidence on record, the learned JMFC, Harij reached to the conclusion that the offence under Section 138 of the Act has been proved against the accused. He therefore recorded the finding of guilt against the accused and accordingly convicted and sentenced him to suffer S.I. for three months and imposed fine of

Rs.5,000/- and in default of payment of fine, S.I. for a further period of one month was imposed.

4. Aggrieved thereby the accused went in appeal before the Sessions Court, Patan by filing Criminal Appeal No.3 of 2004. The learned Additional Sessions Judge, Patan on reappreciation, reevaluation and reanalysis of the evidence on record, dismissed the appeal and thereby confirmed the said order of conviction and sentence passed by the learned JMFC, Harij, which has given rise to the present petition at the instance of the original accused.

5. When the matter is called out today, Mr. Kirtidev Dave, learned advocate for the accused and Mr. Chetan P. Pandya, learned advocate for Mr. BG Jani, learned advocate for the complainant, jointly submitted that the matter has been settled between the parties amicably

outside the court and as per the said settlement towards the amount of the bounced cheque i.e., Rs.1,50,000/- the applicant has paid Rs.1,00,000/- by D.D.No.100009 dated 12.7.2005 drawn on ICICI Bank Limited to the complainant and the accused has also issued a cheque No.598550 dated 15.11.2005 drawn on ICICI Bank Limited for remaining amount of Rs,50,000/- in favour of Sureshbhai Jagjivandas Thakkar, who is the heir and legal representative of complainant and thus the complainant has received his full amount under dispute and therefore the complainant is ready for compromise with the accused. It is also stated therein that the complainant has died during the litigation and opponent No.1 being his heir and legal representative has agreed for the said settlement. They have also produced written compromise pursis and undertaking sworn by the accused as well as heir and legal representative of the complainant.

6. In view of the above facts stated in the compromise pursis they urged that the conviction and sentence recorded against the accused may be quashed and set aside by allowing this revision application.

7. Mr. HM Prachchhak, learned APP for opponent No.2 – State of Gujarat states that since the matter has been settled outside the court between the parties, appropriate order may be passed.

8. This Court has considered the submissions advanced by the learned advocates appearing for the parties, perused both the impugned orders and the subsequent development which has taken place between both the parties and the compromise pursis which is duly signed by the learned advocates for both the parties as well as solemn undertaking sworn by the accused as well as heir and legal representative of complainant.

9. On perusal of the compromise pursis, it is seen that the accused had issued a cheque for Rs.1,50,000/- in favour of the complainant which was dishonoured on presentation and therefore the complainant filed Criminal Case No.25 of 2001 in which the accused has been convicted and sentenced by the learned JMFC, Harij which has been affirmed by the learned Additional Sessions Judge, Patan in the appeal filed by the accused. On further perusal of the compromise pursis, it is seen that by way of DD No.100009 dated 12.7.2005 drawn on ICICI Bank Limited, an amount of Rs.1,00,000/- has been paid to the complainant and for the remaining amount of Rs.50,000/- a cheque No.598550 dated 15.11.2005 drawn on ICICI Bank Limited in favour of present opponent No.1, who is the heir and legal representative of complainant, has been issued. Therefore, it is agreed between the parties to settle the matter. The complainant – Jagjivandas Karsandas who

filed the Criminal case against the accused has expired during the pendency of the criminal appeal before the learned Additional Sessions Judge, Patan and therefore his heir and legal representative who is opponent No.1 herein has been brought on record before the learned Additional Sessions Judge, Patan. Therefore, there is no manner of doubt that the matter has been settled amicably between the parties and the complainant has received the full amount of the cheque which was issued by the accused and which has been dishonoured.

10. It may be noted that offence under section 138 of the Act is now made compoundable by inserting section 147 of the Act.

11. In aforesaid view of the matter, since by virtue of section 147 of the Act the offence under section 138 of the Act is compoundable the offence is compounded and therefore the order

passed by the learned JMFC, Harij convicting and sentencing the accused which is affirmed by the learned Additional Sessions Judge, Patan deserves to be quashed and set aside by allowing this revision application in exercise of powers conferred under section 397 read with section 401 of the Code.

12. For the foregoing reasons, the petition succeeds and accordingly it is allowed. The impugned order dated 30.12.2003 rendered in Criminal Case No.25 of 2001 by the learned JMFC, Harij convicting and sentencing the accused under section 138 of the Act which is affirmed by the learned Additional Sessions Judge, Patan vide order dated 4.11.2004 rendered in Criminal Appeal No.3 of 2004 is thereby quashed and set aside and as a consequence thereof the accused is acquitted of the offence under section 138 of the Act.

Fine of Rs.5,000/- which has been paid by the

accused in the court of learned JMFC, Harij shall be refunded to him upon due verification.

The accused is on bail. Therefore, his bail bounds shall stand cancelled and sureties are discharged.

13. The compromise pursis together with the undertaking filed by the accused as well as the heir and legal representative of original complainant which is notorised before the notary shall be retained on the record of the case.

Rule is made absolute accordingly.

(A.M. Kapadia, J.)

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